

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF VERMONT

U.S. DISTRICT COURT  
DISTRICT OF VERMONT  
FILED

2015 MAY 18 AM 8:59

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RECO JONES,

Plaintiff,

v.

Case No. 2:14-cv-199

ANDREW PALLITO,  
MICHAEL TOUCHETTE,  
MARK POTANAS,  
JOSHUA RUTHERFORD,  
and ANGEL JOHNSON,

Defendants.

**OPINION AND ORDER ADOPTING MAGISTRATE'S  
REPORT AND RECOMMENDATION**

(Docs. 20 & 27)

This matter came before the court for a review of the Magistrate Judge's April 2, 2015 Report and Recommendation ("R & R"), in which he recommended that the court grant in part and deny in part the Fed. R. Civ. P. 12(b)(6) motion to dismiss filed by Defendants Andrew Pallito, Michael Touchette, Mark Potanas, Joshua Rutherford, and Angel Johnson (Doc. 20). In their motion, Defendants seek dismissal of the complaint because Plaintiff has failed to state a claim upon which relief can be granted. Neither party has filed an objection to the R & R and the time period to do so has expired.

A district judge must make a *de novo* determination of those portions of a magistrate judge's report and recommendation to which an objection is made. Fed. R. Civ. P. 72(b)(3); 28 U.S.C. § 636(b)(1); *Cullen v. United States*, 194 F.3d 401, 405 (2d Cir. 1999). The district judge may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1);

*accord Cullen*, 194 F.3d at 405. A district judge, however, is not required to review the factual or legal conclusions of the magistrate judge as to those portions of a report and recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985).

Plaintiff's constitutional and state law claims arise out of Defendants' alleged denial of Plaintiff's access to certain art supplies, hardcover books, and sunglasses and the alleged due process violations that occurred in those denials. In his twenty-two page R & R, the Magistrate Judge carefully reviewed the factual allegations and legal claims in both the Complaint and the motion to dismiss and ultimately recommended dismissal of all claims although not on all of the grounds sought by Defendants. The court adopts this well-reasoned recommendation in its entirety.

### CONCLUSION


For the foregoing reasons, the court hereby ADOPTS the Magistrate Judge's R & R as the court's Order and Opinion, and GRANTS the Defendant's Motion to Dismiss (Doc. 20) as follows:

1. GRANTED insofar as it seeks dismissal of all claims for money damages against Defendants in their official capacities;
2. DENIED insofar as it seeks dismissal of Plaintiff's § 1983 claims for damages against Defendants Pallito, Touchette, Potanas, and Johnson for lack of personal involvement;
3. GRANTED—for failure to allege any accompanying physical injury—insofar as it seeks dismissal of any § 1983 claim for mental or emotional injury that Plaintiff might be asserting;
4. GRANTED insofar as it seeks dismissal of Plaintiff's claim against Defendant Johnson;
5. GRANTED insofar as it seeks dismissal of any Eighth Amendment claim that Plaintiff asserts against Defendants;

6. DENIED insofar as it seeks dismissal of Plaintiff's claim for punitive damages under § 1983; and
7. GRANTED insofar as it seeks dismissal (without prejudice) of any state-law claims Plaintiff asserts against Defendants.

SO ORDERED.

Dated at Burlington, in the District of Vermont, this 15<sup>th</sup> day of May, 2015.



Christina Reiss, Chief Judge  
United States District Court